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SUBJECT: 2007 IPR SPECIAL 301, MISSION ITALY INPUT

REF: A. ROME 337
[1](#)B. ROME 323
[1](#)C. ROME 290
[1](#)D. ROME 137
[1](#)E. SECSTATE 7944
[1](#)F. 06 ROME 3334
[1](#)G. 06 SECSTATE 196848
[1](#)H. 06 ROME 3243
[1](#)I. 06 ROME 3205
[1](#)J. 06 SECSTATE 180082
[1](#)K. 06 ROME 2428
[1](#)L. 06 ROME 1908

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SUMMARY AND COMMENT

[1](#)1. Italian authorities have taken several significant steps to improve Intellectual Property Rights (IPR) protection here, and there are emerging signs of government agencies acting in concert with each other, and with industry, academic, and union partners to address IPR illegality. In addition, the interest of Italy's largest labor union in IPR (ref A) is a new and particularly heartening development. However, IPR protection in Italy continues to suffer from poor enforcement and minimal or no sentencing; senior government leaders have failed to publicly address the importance of respecting IPR; there is confusing IPR legislation; and there is an absence of comprehensive data on IPR violations and enforcement. These factors, combined with organized crime's growing involvement in piracy and counterfeiting and the public's poor grasp of the importance of IPR to Italy's economic development and culture all indicate Italy should continue to remain on the 301 Watch List for 2007. END SUMMARY AND COMMENT.

[1](#)2. This message conveys an overview of IPR protection in Italy in 2006, and responses to ref E questions (in paras 30-39). ConGens Florence, Milan, and Naples all contributed to the Mission's understanding of the IPR problem, and our attack on IPR infringements.

SOME REINVIGORATED POLITICAL-LEVEL INTEREST IN 301 AND IPR

¶3. In recent demarches on the 2007 301 process, Mauro Masi, the senior GOI official with responsibility for IPR, expressed a strong desire to improve the IPR situation here (ref D). He has indicated that Foreign Minister/Deputy Prime Minister D'Alema and Justice Minister Mastella are also committed to that goal, and would likely support new IPR initiatives and stronger enforcement. Masi also volunteered to prepare a statement for submission on Italy's position on the 301 Watch List to the USG as part of the 301 review process. (NOTE: Post has not yet received this submission, but has received some enforcement statistics. END NOTE).

¶4. In his recent Washington meetings, Minister of Economic Development Bersani acknowledged that getting Italy off the Special 301 Watch List is key to improving bilateral trade with the U.S. Bersani has expressed interest in exploring new measures to improve Italy's IPR. In addition, the Office of the Undersecretary of the Prime Minister, along with Masi, both of whom have expressed continuing interest in the proposed Anti-Counterfeiting Treaty Agreement (ACTA), do recognize that Italy must take effective steps to come off the 301 Watch List in order to participate in negotiating the treaty (refs D and I).

OPERATIONAL IMPROVEMENTS IN IPR PROTECTION

¶5. Mission Italy has seen some well-intentioned, but disconnected efforts by governmental authorities to address IPR protection. For example, the new GOI High Commissioner on Anti-Counterfeiting (ACHC), Giovanni Kessler, has outlined an ambitious program to review Italy's IPR laws; coordinate anti-piracy efforts among the seventeen different GOI agencies with IPR competency; and compile comprehensive IPR

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enforcement data (Italy does not have such data). He has also opened dialogues with industry (including the American Chamber of Commerce) and consumer groups, and requested Embassy assistance for ACHC staff enforcement training (COMMENT: It is unclear whether Kessler and ACHC have real authority to coordinate all of the facets of IPR enforcement effectively (ref D). END COMMENT).

¶6. In addition, the Association of Mayors of Italian Cities (ANCI-Associazione Nazionale Comuni Italiani) is inaugurating plans to improve efforts at curbing IPR violations in large urban centers. ConGen Florence lobbied hard to convince the Florence Mayor to lead the way on this project. Mission Italy will continue to engage ANCI on this good idea, but it is unclear whether this effort will actually materialize in the hundreds of urban areas here.

¶7. The Italian police and magistracy are also preparing to include IPR enforcement in new 2007 training initiatives for police and judges. Our contacts have invited input from Post on potential speakers for their programs.

¶8. The Office of the Prime Minister (OPM) has also included information about Mission Italy's "Building a Culture of IPR Legality" Roundtable, held in Florence in November 2006 (ref F), on the OPM's website, with links to IPR information on Embassy Rome's website.

MISSION EFFORTS TO SPREAD IPR AWARENESS

¶9. Mission efforts to raise awareness in other parts of Italian society on the need to protect IPR better, including with Italy's unions, are detailed in refs. In 2006, CGIL (Confederazione Generale Italiana del Lavoro), Italy's largest trade union confederation, took a strong public stand on the need for effective enforcement of IPR laws in Italy (ref A).

¶10. Mission hosted a roundtable in November 2006 (para 8 and ref F), and included the software, music, film, and internet provider industries, as well as academia and government, to seek their recognition of IPR as a problem and to propose specific, self-funded and self-organized projects to address IPR issues in Italy.

¶11. Post hopes that the efforts detailed above will counteract the stubborn idea that persists among many Italians--both government officials and regular citizens--that piracy is acceptable and that the trade in fake goods provides a legitimate livelihood to immigrants, who might otherwise engage in more serious criminal activity.

SOME EVIDENCE OF IMPROVED LAW ENFORCEMENT EFFORTS

¶12. The GOI/Italian police authorities have no comprehensive figures on arrests or convictions. However, generally rising confiscations of pirated goods suggest that there is some increased effort.

¶13. The Guardia di Finanza (GdF, the Finance Ministry's national police force with jurisdiction over financial crime) continues to increase its enforcement efforts. According to GdF statistics, the GdF devoted over 838,000 man hours to IPR cases in 2006, an increase of roughly ten percent from 2005. Interestingly, GdF seized about the same number of fashion-related counterfeit items in both years (14,240,047 in 2005; 14,298,076 in 2006), but seized almost 30 percent more electronic pirated material (20,156,180 in 2005; 29,446,407 in 2006). Of electronic items seized, CDs, DVDs, and other audio-video increased from roughly 12 million in 2005 to 16.5 million in 2006; software confiscations declined from 131 thousand pieces in 2005 to 113 thousand in 2006; and videogames increased from roughly 2,800 to 9,400 pieces from 2005 to 2006. Telephones and telephone accessories made up the greatest percentage increase in items seized, with roughly 1.3 million confiscated in 2005 and almost 7.5 million seized in 2006.

¶14. Data provided by the GOI Delegate on IPR (Masi) also
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shows increases in Carabinieri (the Italian military-police corps) anti-piracy efforts. Successfully executed Carabinieri seizure operations of counterfeit and pirated goods rose from 2,508 in 2005 to 3,346 in 2006. Fashion-related goods confiscated rose from roughly 92,000 items in 2005 to roughly 500,000 in 2006. CD, DVD and other audio-video seizures increased from roughly 544,000 to roughly 616,000; and software seizures increased marginally from 46,000 in 2005 to roughly 50,000 in 2006.

¶15. As reported in several SIPRNet pieces (see SIPRNet reports from October 5, 2006, October 25, 2006; November 24, 2006; December 13, 2006; January 19, 2007; January 31, 2007), Italian law enforcement officials have made several large piracy and counterfeiting arrests and confiscations in 2006. (COMMENT: What is not known is the overall share of pirated/counterfeit products available on the market. ConGen Milan reports that while the number of seizures and products seized are going up, so are the number of counterfeit products, particularly in the electronic/audio-visual sector.

It is likely that the actual number of goods seized compared to goods available on the market is getting smaller. END COMMENT).

THE "CHINA THREAT" SPARKS ACTION.

¶16. Much of the GOI enforcement actions in 2006 focused on trademarks and was a direct reaction to the growing threat

posed by Chinese counterfeiting. Italian authorities are increasingly conducting raids in Chinese immigrant communities. The threat pose by both Chinese counterfeiting and lower Chinese labor costs to Italian producers and retailers also has pushed CGIL to take IPR protection seriously. As evidence of CGIL's awareness of the Chinese role in the market for pirated goods, CGIL invited an official from the Chinese National Association of Textile Companies to its IPR conference in January of 2007 (ref A).

BUT SIGNIFICANT PROBLEMS REMAIN.

¶17. While we have sought to make the case above that there has been a change in some Italian attitudes toward IPR, the increase in piracy rates, ubiquitous and flagrant street vending of pirated goods, and lack of consistent enforcement, confiscation, and adjudication with effective penalties, inform our recommendation not to remove Italy from the 301 Watch List.

PIRACY REMAINS RAMPANT.

¶18. Estimated cases of intellectual property piracy, as reported by member associations of the International Intellectual Property Alliance (IIPA), actually increased in 2006 over 2005. Further, IIPA believes that Italy has one of the highest piracy rates in Europe. Music piracy increased seven percent from 2005 to 2006, and entertainment software piracy increased ten percent. The business software sector reports a decrease from three percent from 2005 to 2006, but the sector believes that growing internet and optical media piracy, combined with one of the highest rates of business software piracy in Europe, makes Italy an ongoing IPR challenge. While the film and publishing industries do not yet have 2006 statistics, our contacts report that piracy problems continue, due to illegal internet downloading and physical copying of copyrighted materials.

¶19. There are flagrant cases of illegal street vending in the major tourist areas in Rome. Pirated music, film, and software, in addition to counterfeit designer merchandise, are still sold openly on Italian streets (almost always by immigrants). The approach of GdF or other law enforcement vehicles to an area where counterfeit vendors are operating induces momentary flight; but when law enforcement moves on, the vendors return. ConGen Naples reports CDs and DVDs still very much on sale in the streets of Naples--including in middle- and upper-class neighborhoods. However, ConGen

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Naples sources report a decrease in optical disk vending in Palermo, probably because of the growing popularity of internet piracy. Similarly, ConGen Milan has observed street vendors shift away from optical media in favor of fake luxury goods, probably due to internet downloading.

NO COMPREHENSIVE GOI STATISTICS ON IPR

¶20. As discussed above, the GOI has provided some initial IPR-related statistics for 2005-2006 (paras 13-14). However, the GOI does not have information or statistics on the total dimensions of piracy in Italy (para 15), nor does it posses definitive statistics on prosecution and sentencing of IPR crimes.

FEWER ARRESTS

¶21. While we believe there has been an increase in confiscations, actual arrests have decreased. The GdF pursued slightly fewer IPR cases in 2006, compared with 2005 (17,801 in 2005; 17,691 in 2006), which resulted in fewer

arrests in 2006 (587 in 2005; 455 in 2006). Similarly, while the Carabinieri pursued more IPR cases in 2006 (1,367) compared to 2005 (1,160), arrests declined from 905 in 2005 to 792 in 2006.

¶22. Gdf officials report they are concentrating on landing the "big fish," the more important IPR criminals, those who are directing street vendors and small-time duplicators, and who have ties to organized crime. This policy strategy leaves efforts to combat the street-level trade to local authorities. However, local authorities, especially in small- and medium-sized cities, say they are not equipped to combat street piracy.

LEGAL OBSTACLES TO EFFECTIVE ENFORCEMENT

-- Judicial Leniency

¶23. Italy is often credited with having one of the strongest IPR laws in Europe. However, the law's effectiveness is minimal for several reasons. The most apparent is judicial leniency in sentencing. While industry associations and GOI officials credit Mission Italy's outreach efforts (particularly our annual IPR retreats for Italian judges (ref K)) with improving awareness of IPR crime among the judiciary, Italian judges generally continue to treat IPR crime with excessive leniency. As stated in para 11, many in Italy, judges included, believe that piracy is not a serious offense; many judges are reluctant to impose deterrent sentencing provided by the law. Nevertheless, there are judges who "get it" on IPR, and who are educating their peers about the heavy involvement of organized crime in IPR illegality.

-- The "Indulto"

¶24. In summer 2006, Parliament passed a "Pardon Law" (aka the Indulto), which provided a general amnesty for all offenders convicted of crimes with jail terms of three years or less, and reduced by three years all jail terms of more than three years. Since the maximum sentence for IPR violations is three to four years, this law effectively wiped out the great majority of IPR cases from the past several years. Industry groups worry that the "Indulto" conveys a message that the government is not serious about IPR enforcement.

-- The "Ex-Cirielli Law"

¶25. In November 2005, Italy's Parliament passed a judicial reform law (the "ex-Cirielli" bill) to speed the notoriously slow pace of criminal trials by restricting the statute of limitations for most crimes. Industry groups believe the reform will exacerbate the existing problem of IPR defendants stalling criminal trials until the statute of limitation runs out and the case is dismissed. The GOI, however, strongly denies "ex-Cirielli" will affect IPR prosecutions and claims that, by increasing penalties for repeat offenders, the

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reform actually creates a greater deterrent against career IPR thieves. It will be several years before the true effect of "ex-Cirielli" is fully understood.

-- The "Pecorella Law"

¶26. Passed in 2006, the so-called Pecorella Law prevents public prosecutors from appealing defendants' acquittals or not-guilty verdicts, leaving only recourse to the Italian Supreme Court as an option. Defendants, however, retain the right to an initial appeal and, upon that appeal's failure, the right to an additional appeal to the Supreme Court. Industry fears that IPR violators may take advantage of this law to delay decisions, which could result in expiration of the statute of limitations on their crimes. Recently, a part of the law has been declared unconstitutional; and public

prosecutors again have power to appeal acquittals. Post will continue to monitor developments on this law.

-- Internet Piracy Law Weakened

¶27. In 2005, Parliament revised the "Urbani Law," Italy's internet piracy statute, enacted in 2004. The original law stipulated potential prison sentences for internet piracy, regardless of whether uploading was done for monetary gain, or not. Under pressure from internet service providers (ISPs), however, Parliament revised the Urbani Law to apply prison sentences only to commercial, for-profit, on-line piracy. Sharing copyrighted works for free technically remains a criminal offense, but it no longer carries the threat of jail time; and those caught can avoid a conviction by paying a fine (NOTE: There is ongoing tension between ISPs and copyright holders on this law. END NOTE).

-- Poorly Administered IPR Consumer Law

¶28. In May 2005, Parliament enacted a Euro 10,000 fine (roughly \$13,000) for the purchase of counterfeit items. However, the measure is simply not applied. Many in the GOI, in addition to the general public, believe the fine is unreasonable. Post believes that the public and law enforcement views that the fine is unreasonable means the fine does not help protect IPR in Italy.

Italy Is TRIPS Compliant On Paper.

¶29. The continuing failure of Italian courts to adequately punish IPR crime (para 23) and Italy's costly, slow civil process raises concerns about Italy's TRIPS compliance in practice. However, Italy's IPR legal regime is compliant with the TRIPS Agreement.

Additional Responses to Ref E Questions

Optical Media Controls

¶30. SIAE (Societa' Italiana degli Autori ed Editori), the GOI royalty collection agency, encourages optical disk producers to use source identification codes, but this suggestion is not mandated by law. The music industry has lobbied (as yet unsuccessfully) for inserting greater controls on optical media production equipment and inputs into Italy's Copyright Law.

Use and Procurement of Government Software

¶31. Italy has varied forms of software procurement regulations depending on whether procured for central or local government agencies. National government offices have mostly legal software, though the use of unlicensed software remains a problem in some regional or local governments. A proposed 2007 outreach initiative headed up by Microsoft Italy may begin to address this and other similar issues in local government software use.

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Geographic Indicators, Folklore, Genetic Resources

¶32. Embassy is aware of no new legislation covering geographic indicators, folklore expression, or genetic resources. However, the Ministry of Foreign Trade has stated that an agreement on geographical indicators remains a priority for Italy in the WTO Doha Round negotiations (ref B).

Pharmaceuticals

¶133. Mission notes PhRMA concerns with the GOI using spending ceilings to control drug prices. We will continue to urge the GOI to adopt more transparent, fair and equitable regulations; but we do not agree with PhRMA's suggestion that the USG place Italy on the Priority Watch List.

Pharmaceutical patents are, overall, better protected in Italy than copyrights or trademarks. Italy's distribution system is well controlled, with strict tracking specifications for medications that discourage counterfeiting. There are very few cases of counterfeit pharmaceuticals, and those about which the Italian authorities have expressed most concern relate to imported herbal remedies. Post has not heard complaints about inadequate protection of test data.

WIPO Treaties

¶134. Italy has signed, but not yet ratified, both the WIPO Copyright Treaty and the Performances and Phonograms Treaty. Embassy will continue to push for ratification.

Training

¶135. Italian law enforcement agencies are enthusiastic participants in USG-sponsored training programs, but a worsening budget situation limited Italian participation in Washington-based programs in 2006.

¶136. Post sees a special need for more training of Italian judges and law enforcement officials on implementing and executing IPR laws. To that end, Post has organized a one-day IPR training session for ACHC officials sponsored by the International Anti-Counterfeiting Coalition (IACC). ACHC has further committed to sending several officials to USPTO's IPR Enforcement Academy program, summer 2007.

¶137. As mentioned in para 7 above, the Italian Police Directorate is incorporating IPR training into its 2007 program for its officers. Further, Italy's magistracy recently held a regional program in Milan for Italian judges on technical aspects of judging IPR cases. The magistracy is also planning to institute IPR training for judges throughout Italy.

¶138. Mission Italy sponsored several training initiatives in 2006. Embassy Rome hosted its fourth annual IPR Retreat in May 2006 that convened Italian judges to discuss best practices in IPR enforcement and judicial review (ref K). The Embassy and ConGen Florence also hosted a roundtable discussion in November 2006 for IPR industry representatives, GOI officials, and other interested parties on "Building a Culture of IPR Legality" (paras 8 and 10, and ref F). The USPTO participated in the Florence session. Embassy Rome's DHS/ICE attach conducted an IPR training seminar for GdF officials in May 2006. ConGen Naples supported the organization of an IPR seminar for Treasury Police in Salerno (in the Campania region of Italy), where increased pirate activity has been reported. ConGen Milan regularly nominates officials from GdF or Postal Police every year for IPR-related State Department International Visitor Programs.

¶139. The Embassy will host a new IPR roundtable for Italian judges in spring 2007, in Gubbio, Italy. This program represents an advance in Post's strategy for addressing judicial deficiencies in Italian sentencing of IPR-related crimes. Post will invite members of Italy's judiciary who

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hold positions as judicial trainers in each region of Italy. These judges are in charge of continuing education for their

fellow judges, and determine the curriculum for their colleagues in their respective regions. Post believes that sensitizing these judges to the need for more stringent IPR prosecution and sentencing will result in larger numbers of judges reviewing IPR cases. This program will also dovetail with the Italian judiciary's plans for judicial training in the future.

SPOGLI